

Fred Simpson, Esq.
JENKS & SIMPSON, P.C.
1821 S. Avenue W., Suite 204
Missoula, MT 59801
Telephone: (406) 549-2322
Facsimile: (406) 549-2707
Email: fsimpson@jenkssimpson.legal
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

IVY HERZOG)	CV- <u>21-44-BU-BMM</u>
)	
Plaintiff,)	
)	
vs.)	DEFENDANT'S NOTICE OF
)	REMOVAL
METROPOLITAN PROPERTY AND)	
CASUALTY INSURANCE)	
COMPANY, and DOES I-V,)	
)	
Defendants.)	

COMES NOW Defendant Metropolitan Property and Casualty Insurance Company (“Metropolitan”), by and through counsel, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby removes the above action from the Montana Eighteenth Judicial District Court, Gallatin County, Montana, to this Court based on the following grounds:

1. On April 16, 2021, the above-named Plaintiff filed a Complaint and Demand for Jury Trial against Metropolitan in the Montana Eighteenth

Judicial District Court, Gallatin County, Montana, Civil Cause No. DV-21-401B (“Complaint”). *See Exhibit A.*

2. The Summons and Complaint filed in this matter were served upon Metropolitan through its registered agent on April 26, 2021.

3. According to the Complaint, Plaintiff resides in Gallatin County, Montana, and is therefore a citizen of the State of Montana. Complaint, p. 1, ¶ 1.

4. Metropolitan is a corporation incorporated in and having its principal place of business located in the State of Rhode Island. Therefore, pursuant to 28 U.S.C. §§ 1332(c) and 1441, Metropolitan is deemed to be a citizen of the State of Rhode Island.

5. Based upon the allegations in the Complaint, the amount in controversy exceeds \$75,000, exclusive of interest and costs. In particular, Plaintiff claims that she “is expected to incur more than \$500,000 in future medical treatment as a result of the subject accident,” and that “Plaintiff demanded \$250,000 in UIM coverage” from Metropolitan which Metropolitan refused to pay. Complaint, p. 3, ¶¶ 14, 16. In the prayer for relief portion of her Complaint, Plaintiff seeks, among other items of claimed damage, a judgment including “all past and future medical expenses[.]” Plaintiff further alleges that she is entitled to recover damages “including mental suffering and distress with physical manifestations, anxiety, anguish, worry, sleep loss, depression,

pecuniary loss, and foreseeable financial hardship” based upon Metropolitan’s alleged breach of “its duty of good faith and fair dealing[.]” *Id.*, p. 5, ¶ 27.

6. Removal of this case is permitted under 28 U.S.C. § 1441 based upon complete diversity of citizenship, and the fact that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Pursuant to 28 U.S.C. § 1441(a) and Rule 1.2(c)(2) of the Rules of Procedure of the United States District Court for the District of Montana (“L.R.”), the United States District Court of Montana, Butte Division, has jurisdiction and venue over this action because the Butte Division includes Gallatin County, Montana.

8. Pursuant to 28 U.S.C. §§ 1446(a), the following documents constitute all of the pleadings, motions, and other papers which have been filed in the state court action, and copies are attached hereto as follows:

- a. Complaint (**Exhibit A**); and
- b. Summons (**Exhibit B**).

9. No motions are currently pending, and no hearings have been set in the state court as of this date.

10. Pursuant to 28 U.S.C. §§ 1446 (d) and L.R. 3.3(a), copies of this Notice of Removal will be filed in the Montana Eighteenth Judicial District Court, Gallatin County, and served upon Plaintiff’s counsel.

11. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it is filed with the Court within thirty days of service of the Summons and Complaint.

Dated this 17th day of May, 2021.

Jenks & Simpson, P.C.

By /s/Fred Simpson
Fred Simpson
Attorney for Defendants

CERTIFICATE OF SERVICE

I certify on this 17th day of May, 2021, a copy of the foregoing document was served upon the following persons by the following means as indicated below:

CM/ECF

Clerk, U.S. District Court

Mail

Hand Delivery

Overnight Delivery Service

Fax

Email

CM/ECF

Mail

Hand Delivery

Overnight Delivery Service

Fax

Email

Jason Kamerath, Esq.

LOWE LAW GROUP

6028 S. Ridgeline Drive, Suite 200

Ogden, UT 84405

(406) 630-5144

jason@lowelawgroup.com

Attorneys for Plaintiff

U.S. Mail

Hand Delivery

Federal Express

E-Mail

Certified Mail, Return Receipt

Requested

Eric Hinckley, Esq.

LOWE LAW GROUP

6028 S. Ridgeline Drive, Suite 200

Ogden, UT 84405

(406) 630-5144

Eric_h@lowelawgroup.com

Attorneys for Plaintiff

JENKS & SIMPSON, P.C.

By /s/Fred Simpson

Fred Simpson

Attorney for Defendants